

**REMARKS**

In the Office Action, claims 1, 2 and 5 - 9 were rejected under 35 U.S.C. 102(e) as being anticipated by U. S. Patent No. 6,208,663 (Schramm et al.); claim 3 was rejected under 35 U.S.C. 103(a) as being unpatentable over Schramm in view of U.S. Patent No. 6,128,276 (Agee) and claim 4 was rejected under 35 U.S.C. 103(a) as being unpatentable over Schramm in view of U. S. Patent Publication No. US 2002/0037058 (Birru).

The present claims receive data from a higher level ARQ mechanism and provides for a physical layer ARQ mechanism. None of the cited art alone in reasonable combination disclose such a method. This method provides for more efficient transfer of data over a wireless system, as described in the present specification.

With respect to the statutory type double patenting, Applicant respectfully submits that the new claims no longer fall under statutory type double patenting. With respect to the obviousness/double patenting rejection, Applicant is willing to submit a terminal disclaimer if the claims are otherwise deemed allowable.

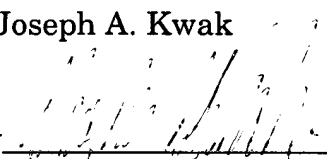
**Applicant:** Joseph A. Kwak.  
**Application No.:** 10/084,043

Additionally, with respect to the two references submitted on the PTO Form-1449 received on August 5, 2004, Applicant submits a copy of the two missing references and attached a copy of the Form PTO-1449 initialing by the Examiner indicating his consideration of those references.

Reconsideration and entry of this amendment is respectfully requested.

Respectfully submitted,

Joseph A. Kwak

By   
Jeffrey M. Glabicki  
Registration No. 42,584

Volpe and Koenig, P.C.  
United Plaza, Suite 1600  
30 South 17th Street  
Philadelphia, PA 19103  
Telephone: (215) 568-6400  
Facsimile: (215) 568-6499

JMG/pf